

March 26, 2020

Katheryn Emery, P.E.,
Acting Director,
Division Of Water And Waste Management- Environmental
Enforcement,
West Virginia Department of Environmental Protection
601 57th Street S.E.
Charleston, WV 25304
Katheryn.d.emery@wv.gov



**Re: Formal Complaint for WV NPDES WVR109958, WV NPDES Permit WV0115924,
and WVDEP's Unilateral Order 9080**

Dear Acting Director Emery,

We have been informed by Jefferson County Foundation (JCF) of several communications between JCF and WVDEP regarding the City of Charles Town's Individual Registration, WV NPDES WVR109958, to WV NPDES Construction Stormwater General Permit WV0115924, commencement of construction activities for said permit, and WVDEP's Unilateral Order 9080.

Please accept this formal complaint from RAD regarding the City of Charles Town's construction activities on the Rt. 9 sewer line project during the COVID-19 pandemic and to WVDEP's allowance and purposeful obstruction of public notice and participation for said construction activities for NPDES Permit WVR109958 / WV NPDES Permit WV0115924, and to WVDEP's Unilateral Order 9080.

We insist a Stop Work Order be immediately issued for all construction activities related to the "Route 9 Sewer Project" (WV NPDES Permit WVR10995, WV NPDES Permit WV0115924, and WVDEP's Unilateral Order 9080) until the permit is approved, public comment period is over, and released for the reasons listed hereafter.

Construction Commences Before Public Comment Period Ends for Permit

WVDEP issued a public notice for NPDES Permit WVR109958 on March 16, 2020 via email alert and published the notice in the Spirit of Jefferson on March 18, 2020. The public comment period is open from March 16, 2020 to April 17, 2020.

In addition to receiving JCF and WVDEP communications regarding commencement of construction for Permit WVR109958, I have personally witnessed and documented these construction activities.

It is disingenuous and cruel to offer the public the perception of having a voice and request comments, then allow for construction activities to commence before the public comment period is over.

All caution is being thrown to the wind so the City of Charles Town can build this line as quickly as possible. The project is roughly 6 miles long. At the rate they are feverishly working (past 5PM), no doubt it will be complete before the public comment period ends. Perhaps that was the goal of the City of Charles Town and the WVDEP.

RAD'S Objections to WVDEP's Unilateral Order 9080

WVDEP's Unilateral Order 9080 dated March 2, 2020 to the City of Charles Town lacks guidelines, policies, and procedures for public notice and participation.

RAD is forced to ask why put out public notice and give the perception the public has a voice when the WVDEP not only allows for these activities to occur but issues an Order which gives the green light to do so. And it is incredibly chilling that the WVDEP plans to use similar orders for other entities "caught between" 2012 & 2019 General Stormwater permits for the entire state.

This Order is a thinly veiled document devised to aid corporations and businesses to "get things done" and it circumvents, obstructs, suppresses, and extinguishes citizens' rights, interests, participation, and voices.

The public is tired of hearing confusing, misleading, and misdirecting reasons as to why the WVDEP is allowing for the current and past construction activities to occur that break their own rules and regulations. It has been a purposeful and constant "hot potato", "pass the buck", and finger pointing game between departments and personnel regarding which state permits these activities fall under. We assert that a large amount of construction activities have occurred without permits, guidelines, and protections at all. Therefore, we are filing this complaint against WVDEP's statewide Construction Stormwater General Permit, WV NPDES Permit WV0115924, as well for lack of and obstruction to public participation and for reasons stated herewith and assert the WVDEP has violated the rights of all West Virginia citizens.

Unnecessary Construction to Non-critical Infrastructure During COVID-19 Pandemic

RAD strongly objects to construction activities for this project during the COVID-19 pandemic. There are rules and laws for reasons. While we are sure these workers feel fortunate to have jobs and paychecks right now amid the COVID-19 pandemic and we know they work hard, their health and safety, as well as their families' health, are being put unnecessarily at risk to build a sewer line that only serves Rockwool, a non-essential manufacturer that is still in a construction phase and not operating yet.

This sewer line is non-critical infrastructure and we do not see where these construction activities would be categorized under as essential business according to Homeland Securities

"Guidance On The Essential Critical Infrastructure Workforce"

<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

This video was taken by me yesterday, March 25th.

https://drive.google.com/file/d/144Xt8Wrse2KnkFXeWxitm_boz_vGGDo6/view?usp=sharing

If you are unable to access the video in our shared Google Drive folder, we can provide it to you by your preferred digital transfer method. Please note these activities are occurring after Governor Justice's Executive Order #9-20 declaring all non-essential businesses shut down as of 8PM March 24, 2020, to reduce COVID-19 transmission. We assert these construction activities violate federal and state orders to reduce COVID-19 transmission.

We believe there are also erosion and other permit violations occurring as well, however, we will not comment on them at this time and plan to send these in the near future.

Due to the recent events and the total confusion of permitting, **we insist there be a public hearing for NPDES WVR109958** as soon as the COVID-19 gathering restrictions are lifted. The public deserves to have their voices heard and their questions clearly answered.

The recent events which were allowed and encouraged by the WVDEP are deeply disappointing and contradict the WVDEP's mission. The public is truly getting gagged and railroaded, yet again, by the WVDEP. The environment and citizens, the entities the WVDEP are supposed to be serving and protecting, are suffering and will continue to suffer from WVDEP's negligence and dereliction of duties.

Best regards,
Jennifer King
Rural Agricultural Defenders, Chair

cc:

Scott G. Mandirola, Deputy Secretary for External Affairs, WVDEP (via e-mail)

Harold D. Ward, Deputy Secretary for Operations, WVDEP (via e-mail)

Jeremy Bandy, Acting Deputy Director DWW, WVDEP (via e-mail)

Yogesh Patel, Asst. Director, DWW Permits (via e-mail)

Brad Wright, Assistant Chief Inspector, EE/WW (via e-mail)

David C. Simmons, Assistant Chief Inspector, EE (via e-mail)

Laura McGee, Environmental Resources Program Manager, EE (via e-mail)

John Hendley, Environmental Inspector Supervisor, EE/WW (via e-mail)

Shyrel Moellendick, MSSS, EE (via e-mail)

Lisa Trakis, US EPA, Region III (via e-mail)

Karen Melvin, Director, Enforcement and Compliance Assurance Div. Region 3, EPA (via e-mail)

Stephanie Grove, Jefferson County Administrator (via e-mail)